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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Iraq, submitted by the Special Rapporteur, Mr. Max van der Stoel, in accordance with Commission resolution 1995/76

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Introduction

1. The Special Rapporteur has referred in detail to the terms of his mandate in each of his previous reports to the Commission on Human Rights (E/CN.4/1992/31, paras. 1-17; E/CN.4/1993/45, paras. 1-5; E/CN.4/1994/58, paras. 1-2; E/CN.4/1995/56, paras. 1-3; E/CN.4/1996/12, para. 1). Additional references have been made in the introductory parts of his reports to the General Assembly (A/46/647, annex, paras. 1-11; A/47/367, paras. 1-6; A/47/367/Add.1, paras. 1-5; A/48/600, annex, paras. 1-9; A/49/651, annex, paras. 1-6; and A/50/734, annex, paras. 1-6).

2. To summarize the terms of the mandate of the Special Rapporteur, the mandate was originally defined by Commission on Human Rights resolution 1991/74, as subsequently approved by Economic and Social Council decision 1991/256. In paragraph 5 of resolution 1991/74, the Special Rapporteur was requested to make "a thorough study of the violations of human rights by the Government of Iraq, based on all information the Special Rapporteur may deem relevant" and to report to the next sessions of the General Assembly and the Commission on Human Rights. By paragraphs 10 and 13 of Commission resolution 1992/71, as approved by Economic and Social Council decision 1992/241, the mandate was extended and the Special Rapporteur was also requested, "in consultation with the Secretary-General, to develop further his recommendation for an exceptional response". By paragraph 12 of Commission resolution 1993/74, as subsequently approved by Economic and Social Council decision 1993/279, the mandate of the Special Rapporteur was extended for another year. By paragraph 12 of Commission resolution 1994/74, as approved by Economic and Social Council decision 1994/278, the mandate of the Special Rapporteur was extended for a further year. By paragraph 11 of the same resolution, the Commission on Human Rights also requested the Secretary-General, "in consultation with the Special Rapporteur, to take the necessary measures in order to send human rights monitors to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq". By paragraph 13 of Commission resolution 1995/76, as approved by Economic and Social Council decision 1995/286, the mandate of the Special Rapporteur was extended for a further year. In order to assist the Special Rapporteur in the fulfilment of his mandate, the Commission in paragraph 14 of resolution 1995/76, urged the Government of Iraq to "accord its full cooperation to the Special Rapporteur, in particular during his next visit to Iraq".

3. With regard to specific violations, the Commission, in paragraph 2 of its most recent resolution, 1995/76, expressed "its strong condemnation of the massive and extremely grave violations of human rights for which the Government of Iraq is responsible, resulting in an all-pervasive order of repression and oppression which is sustained by broad-based discrimination and widespread terror", and mentioned in particular: summary and arbitrary executions; the widespread routine practice of systematic torture; the enactment and implementation of recent decrees prescribing cruel and unusual punishment, namely mutilation; enforced or involuntary disappearances, and routinely practised arbitrary arrests and detention; suppression of freedom of thought, expression and association; and the unwillingness of the Government of Iraq to honour its responsibilities in respect of the economic and social

rights of the population. In paragraph 8 of resolution 1995/76, the Commission demanded that the Government of Iraq take steps to ensure the recognition and enjoyment of the human rights of persons belonging to minorities; immediately abrogate decrees prescribing cruel and unusual punishments; and immediately cease its repressive practices aimed at the Iraqi Kurds, cooperate in the identification of minefields existing in the northern Kurdish region with a view to facilitating their marking and eventual clearing, and cooperate with international aid agencies in the provision of humanitarian assistance to that region. The Commission also urged the Government of Iraq to implement without further delay the recommendations made by the Special Rapporteur concerning the southern marsh area and its population, in particular to halt and to reverse the draining of the marshes and to receive a mission of recognized international experts to determine the effects on the population and the environment of those drainage projects.

Activities of the Special Rapporteur

4. The activities of the Special Rapporteur in fulfilment of his mandate up to 8 November 1995 are recounted in his interim report to the General Assembly (A/50/734, paras. 4-5). However, to summarize briefly his activities to that time, it may suffice to repeat that the Special Rapporteur continued to make every effort to inform himself about the situation of human rights in Iraq from a great variety of sources. To this end, and as provided for in Commission resolution 1995/76 (para. 12), the Special Rapporteur continued to send human rights monitors to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq.

5. A first mission took place from 22 to 30 June 1995 when two staff members of the Centre for Human Rights travelled to Kuwait in order to follow up on the Special Rapporteur's continuing concern for Kuwaitis and third-country nationals who disappeared during Iraq's occupation of Kuwait, and in order to meet with Iraqi citizens who had recently fled from Iraq to Kuwait. During the visit to Kuwait, the staff members met with a wide range of persons and received testimonies, together with supplementary information in documentary and photographic form.

6. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Iraq, the Special Rapporteur requested the sending of two staff members of the Centre for Human Rights to Lebanon for seven days during the last week of July 1995, where they received testimonies and reports from Iraqi citizens residing in, or visiting, the country.

7. On 4 September 1995, the Special Rapporteur submitted his first periodic report (E/CN.4/1996/12) to the Commission on Human Rights pursuant to Commission resolution 1995/76. In that report he studied the texts of two recent decrees of the Revolution Command Council that were reported to grant amnesty to specified categories of persons.

8. On 24 November 1995, the Special Rapporteur presented his interim report on the situation of human rights in Iraq to the General Assembly at its fiftieth session.

9. Throughout 1995, testimonies continued to be received from refugees who continue to leave Iraq, despite the impediments to departure and other difficulties in leaving that many report. Other forms of information, ranging from amateur video recordings to analytical reports and medical diagnoses, continue to be received.

10. Having taken into consideration the information described above, and having acted in fulfilment of his mandate as also described above, the Special Rapporteur submits the present report to the Commission on Human Rights.

11. The information contained in the present report is up to date as of 26 February 1996.

The legal framework

12. In each of his previous reports to the Commission on Human Rights, the Special Rapporteur has detailed the legal framework within which he assesses the compliance by Iraq with its obligations under international human rights law. In presenting this (his fifth) report to the Commission, the Special Rapporteur will not repeat again, nor summarize, the wide range of standards applicable to the situation of human rights in Iraq. It should suffice to state that Iraq is a State Party to almost all of the main human rights treaties (see E/CN.4/1994/58, para. 13), having also acceded to the 1989 Convention on the Rights of the Child on 15 June 1994. However, it is necessary at the same time to recall that there are no special circumstances which Iraq may invoke by way of permissible excuses under international law, particularly since Iraq has never derogated from any of its specific obligations (see E/CN.4/1992/31, paras. 22-39). Moreover, while all the human rights obligations of Iraq maintain their normal legal effects under international law, Iraq is under special legal obligations pursuant to a series of Security Council resolutions, notably resolutions 661 (1990), 666 (1990), 687 (1991), 688 (1991), 706 (1991), 712 (1991), 778 (1992) and 986 (1995).

13. While the above applies generally within the jurisdiction of Iraq, the Special Rapporteur has previously observed the peculiar situation which persists in that part of the territory of the State of Iraq from which the Government of Iraq withdrew its administration in October 1991 subsequent to the armed intervention of the allied forces of certain States (see E/CN.4/1994/58, paras. 16-18). In so far as the Government of Iraq therefore disclaims responsibility in the region, and no other State is any longer occupying the territory, the Special Rapporteur has argued that there remains "a residual obligation on the international community to fulfil the humanitarian needs of the affected population" (E/CN.4/1994/58, para. 18). The Special Rapporteur notes in this regard that, over the past year, there has been no change in the legal situation of this predominantly Kurdish region.

I. THE POLITICO-LEGAL ORDER OF REPRESSION

14. In the past five years, the Special Rapporteur has produced 11 separate reports detailing, in a total of more than 500 pages, a variety of serious human rights violations of a civil, cultural, economic, political and social

nature. These reports have taken into consideration thousands of pages of testimony, thousands of official Iraqi documents (selected from among approximately 4 million documents to which the Special Rapporteur has access), aerial and satellite photography, amateur video recordings, some important audio recordings, and a variety of physical evidence ranging from flesh wounds to chemical residues in soils. The Special Rapporteur has also taken into consideration expert opinions, scientific studies, medical diagnoses and analytical reports produced by a wide variety of persons. Further, visits have been conducted to 10 countries in order to receive and verify information of all kinds and from all types of sources.

15. As a result of his work so far, the Special Rapporteur drew detailed conclusions in his report to the Commission in 1995 (E/CN.4/1995/56, paras. 61-66) concerning the factual situation, the causes of the violations which he determined to be widespread, and also the responsibility (both of the State and also of named individuals) for those violations. Following those conclusions, the Special Rapporteur offered a comprehensive list of recommendations to improve the situation of human rights in Iraq.

16. To the knowledge of the Special Rapporteur, the Government has not so far implemented his recommendations. Nor has there been a significant change in any of the structures of the State which the Special Rapporteur believes are the cause of widespread and systematic violations of human rights in Iraq. To the contrary, evidence shows that these structures have been employed to cause yet more violations. The Special Rapporteur submits that the amputation decrees, which are still in force in Iraq notwithstanding amnesty Decrees Nos. 61 and 64, irrefutably remain gross violations of human rights and an offence to the population as a whole and, in particular, to the individuals who must endure such cruel and unusual punishments. As concerns the national referendum of 15 October 1995, the Special Rapporteur concluded that the result in no way reflected the genuine will of the people, as required by article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights.

17. In the absence of the slightest sign of an improvement in the overall situation of human rights in Iraq, the Special Rapporteur submits that his previous conclusions relating to the causes of human rights violations in Iraq remain valid. The Special Rapporteur emphasized that the core of the problem in Iraq lay in the structure of power, which made possible gross abuses constituting serious human rights violations. To recapitulate, the Republic of Iraq is so structured as to concentrate enormous power in extremely few hands, with ultimate power vested in the person of the President of the Republic. The President rules through a Revolution Command Council, which has the power to override the Provisional Constitution at any time and without judicial review. Parallel to the normal institutions of government exists the extremely powerful Ba'ath Party, which enjoys special status pursuant to the Leading Party Act No. 142 of 1974. While the Special Rapporteur concluded that the politico-legal organization of the Republic of Iraq constituted of itself a systematic cause of human rights violations, he went on to demonstrate that power is grossly abused on a daily and widespread basis.

A. Violations of civil rights

18. Since the politico-legal structure of the Republic of Iraq has not changed in the past year, human rights continue to be violated in Iraq. Not surprisingly, allegations relating to incidents in all parts of Iraq which detail such violations continue to be received. While the Special Rapporteur has again received allegations of all types of violations, and while he could, therefore, again present a long list of such violations (which the Government of Iraq would again flatly deny or seek to excuse), he will refer only to some recent allegations by way of example. In this connection, the Special Rapporteur draws attention to his interim report to the General Assembly (A/50/734) in which he recounts allegations regarding: Kuwaitis and third-country nationals who continue to be missing five years after the end of the Gulf War; lega applications of cruel and unusual punishments; arbitrary arrests, torture and other degrading treatment, particularly during detention; and infringements upon the rights to food and health care.

19. Killings of all types have continued to be reported in Iraq during the past year. Extrajudicial executions have been reported in relation with military operations in the southern marsh area of Iraq as civilian settlements are said to have been shelled and razed. For example, during October 1995, it was reported that Iraqi military forces had attacked civilian villages in Mesan and Basra provinces resulting in the killing or wounding of many civilians. Certain areas in the northern part of Iraq are also subject to indiscriminate shelling carried out by the Iraqi forces. On 1 January 1996, the villages of lower Darman and upper Darman, situated on the lower Zab River in the Sheikh Bazini area were reportedly assaulted by tanks and armoured battalions of the 8th Infantry Division. In October and November 1995, the outskirts of Chamchamel in the Governorate of Suleimaniyah in northern Iraq were also subjected to shelling, reportedly carried out from territory under the control of the Government of Iraq.

20. A number of cases in which persons are said to have died under torture in detention (their bodies being returned to their families bearing the marks) also constitute extrajudicial executions. For example, the body of Kazem Rida Ali Al-Hakim from the city of Karbala was said to have been returned from the Islah Directorate in Abu Ghraib Prison to his family on 30 January 1995 bearing signs of severe torture. In October 1995, the corpses of Haidar Sayyid Amr and Sabah Nuri Shukr were also reportedly given back to their families in Abu Ghraib. Both of the bodies were reportedly mutilated as a result of explosives having been put inside them.

21. In the course of the uprising which took place in the city of al-Ramadi in May 1995 as a consequence of the Government having delivered the tortured body of Brigadier General Muhamed Madhloum al-Dulaimi to his family, there was allegedly disproportionate and indiscriminate use of force, which resulted in many arbitrary killings. It was also reported that persons arrested during the uprising were subsequently extrajudicially executed. In the case of some executions, it was further reported that the authorities interfered with the burial rites, preventing relatives from praying for the dead and limiting attendance at the funerals.

22. The application of the death penalty on a yet wider scale has given rise to allegations of more summary and arbitrary executions, both within the military and among the civilian population. In particular, the death penalty was reported to have been applied in a wholly disproportionate way in 1995 against persons convicted for small crimes such as pickpocketing or illegally exchanging money.

23. The Special Rapporteur has also received credible allegations of thallium poisoning supported by certification of medical diagnosis. In January 1995, Major Safa al-Battat, a 31-year-old former Iraqi officer who defected from the Iraqi Special Forces, was flown to the United Kingdom to receive medical treatment for thallium poisoning at the Llandough Hospital in Cardiff, where he was admitted on 23 January 1995. He had reportedly developed symptoms after drinking a beverage laced with the chemical in Shaqlawa. Mr. al-Battat was not the first political opponent of the Government of Iraq to be brought to the United Kingdom for such treatment; the Special Rapporteur has received a list of over 80 names of victims of thallium poisoning. In 1992, two other Iraqi dissidents, Abdullah Abdelatif al-Jabouri and Abdul Karim al-Jabouri, who left the Iraqi Army after the Gulf War to join the opposition in northern Iraq, were poisoned by thallium after drinking tea and were flown to the United Kingdom and were treated in a London hospital.

24. In assessing respect for the right to life, personal security and the rule of law in Iraq, the Special Rapporteur cannot help but comment upon the brutal murder on 23 February 1996 of the two sons-in-law of President Saddam Hussein, Lieutenant-General Hussein Kamel and Colonel Saddam Kamel, just three days after they had returned to Iraq, apparently believing the President's promise of pardon for their defection to Jordan in August 1995. The Special Rapporteur notes that the official version of the event is that members of the victims' own family decided to take the lives of the two (together with their father and younger brother) in order to save the family's honour. However, even supposing this to be true and that the murders were not carried out by agents acting on the President's orders, the State funeral as "heroes" reportedly accorded to two of the murderers who were killed during their attempt to storm the house where the victims were staying proves once again that the regime considers as legitimate and even praiseworthy the killing, without the slightest pretence of any kind of judicial procedure, of persons considered to be hostile to it. The Special Rapporteur considers these events clearly to demonstrate the true nature of the regime prevailing in Iraq.

25. The Special Rapporteur has also continued to receive reports of widespread arbitrary arrest and detention. Some of these concern the arbitrary arrest several years ago of persons who continue in detention, while others concern recent arrests and detention. For example, the Special Rapporteur received a communication stating that in the course of 1994 a large number of imams from mosques and prayer halls in Baghdad had been arrested, incarcerated or executed owing, among other things, to their expressed opposition to the application of the amputation decrees. In this regard, on 28 October 1994, 40 imams from al-Anbar governorate were arrested for having allegedly expressed opposition to the Iraqi regime. Among them were Sheikh Abdullah Jeity, Sheikh Qassib al-Faidhy and Sheikh Abdulkader Abbas.

26. Widespread arbitrary detention was also said to have taken place in the city of al-Ramadi in May 1995 in the context of the uprising mentioned above (para. 20). According to reliable sources, this wave of arrests involved more than 1,000 people, among them women, children and elderly persons. Over the past year, the Special Rapporteur continued to receive several allegations of arbitrary arrests and detention of groups of persons in southern Iraqi communities, often reported in the context of military operations. However, the Special Rapporteur notes in this regard the legalization of such arbitrary detention pursuant to, inter alia, Revolution Command Council Decrees Nos. 70 and 74 of June 1994 (for the texts of the Decrees, see E/CN.4/1995/56, annex; for analysis of the Decrees, see E/CN.4/1995/56, paras. 36-37) which grant powers of detention to the Ba'ath Party, essentially without any checks. As long as such decrees exist, there will undoubtedly be widespread arbitrary arrest and detention.

27. Other testimonies gathered on missions to Lebanon and Kuwait indicate that arbitrary arrest and detention remain widespread throughout the country, with people still being taken directly from their homes. The Security Services (Mukhabarat) are said to be still preoccupied with trying to find everyone who participated in the March-April 1991 uprisings.

28. Upon arrest, gross mistreatment and cruel torture are said still to occur. During their mission to Lebanon in July 1995, the staff members of the Centre for Human Rights received testimony from witnesses, corroborated by their scars and disabilities, about torture that they had suffered over long periods. One witness testified that, during three and a half years of arbitrary detention prior to his release in the spring of 1995, he was regularly hung by his hands, which were bound behind his back, with someone pulling down on his body so that his shoulder sockets were destroyed; he can now rotate his arms backwards over his head but he can carry hardly any weight. In addition, he was badly beaten on his back, causing some of his vertebrae to become displaced and resulting in serious curvature of the spine: he is now deeply bowed when he stands. Further, he was forced on several occasions to sit on a bottle for minutes at a time, causing bleeding and rectal damage that required medical treatment, and on one occasion, he suffered electric shocks to his tongue and genitals. Another witness claimed to have been imprisoned and brutally tortured over a 12-year period in the Mukhabarat office in Baghdad, Fadhliyah detention centre and Badush prison in Mosul. Among the astounding number and variety of forms of torture he claims to have suffered are the following: he was hung by his feet from a rotating fan and beaten with cables by Mukhabarat officers; he was forced to sit on bottles of varying sizes for various periods of time; he was once made to stand in a large tub of filthy waste water up to his nose so he could hardly breathe; he was once sprinkled with sulphuric acid from a syringe during an interrogation; during another interrogation, he had a heavy acidic oil poured on one arm; he was administered electric shocks on different occasions, once while sitting in a chair with his feet in a shallow bucket of water, causing his feet to become inflamed and making it difficult for him to walk; he once had a small leather strap tied around his penis to prevent him from urinating while, at the same time, he was forced to drink large quantities of sugared water; he was several times forced to crouch for long periods in a tiny box; and he was raped numerous times. Having been sentenced to life imprisonment for espionage and membership in the Islamic movement, the witness claims to

have been liberated during an uprising by the al-Jabouri clan in Mosul in 1994 and to have subsequently fled the country. The witness bears numerous scars and suffers disabilities that are consistent with his testimony.

29. According to testimonies received, penal amputations continued to be enforced in the spring and early summer of 1995. Military deserters who had escaped to Kuwait stated that they saw many soldiers who had had their ears cut off. Two young men who were interviewed had suffered such penalties themselves: one had both his ears entirely amputated in a rough fashion and had a "-" sign scar in the middle of his forehead, which he stated was the result of a surgical cut applied at the time of the amputation of his ears, while the other young man had a large and dark "‡" sign branded between his eyebrows and had large inflamed scars running up and down his arms and on his body from battery acid poured on him by military officers as an alternative to cutting off his ears. The officers had also fractured the skull of the second soldier with a metal pipe, resulting in a speech impediment and recurring dizzy spells. The deserter who had had both his ears amputated testified that he had been given a general anaesthetic in the prison hospital where the operation was performed and where he had remained without medicine for weeks afterward; his bandages were changed only every two weeks. He further testified that he was among several hundreds of others who had been brought from throughout Amarah, Nassiriyah and Basrah Governorates in order to have their ears cut off in the prison hospital. While some were said also to have received the surgical cut across the forehead, as had the witness, others were said to have been branded on the forehead with an "X". Many were said to have acquired infections, received no treatment and died. Another soldier, who claimed to have had access to military detention centres as part of his work, testified to having seen at least 30 soldiers in various places who had had their ears cut off, and stated that they were bandaged and bleeding. Some of them had acquired infections for which they were prohibited treatment and for which, in any event, there were no medicines available. These testimonies were supported by that of a medical doctor who had fled from Basrah, where he confirmed that many young men had been brought to the hospitals to have their ears cut off: one ear for the first desertion, both ears for a second offence, and branding of the forehead in every case. While anaesthetics were used for the operations, which were described as an irregular cut followed by a suture, post-operative treatment was forbidden; one victim was said to have died of septicaemia. For the brandings, the technique employed was a cauterized "-" sign across the forehead. The doctor stated that he had heard from other doctors that a total of 150 amputations were performed in January 1995. The doctor also confirmed that they were forced to perform the operations or received heavy penalties for refusal: one doctor who refused was arrested by the Mukhabarat for two days and returned compliant, while another disappeared.

30. On the subject of disappearances, it is to be noted that Iraq remains far and away the State with the largest number of cases taken up by the Working Group on Enforced or Involuntary Disappearances; as of the end of 1995, there were 16,131 cases still unresolved, with hundreds more cases waiting to be taken up (see E/CN.4/1996/38, paras. 267-274). There also continue to be hundreds of missing foreigners in Iraq, or for whom Iraq is responsible. In fulfilling his mandate, further to paragraph 3 of Commission on Human Rights resolution 1995/76), to examine the fate of the still more than 600 Kuwaiti

and third-country nationals who disappeared during Iraq's illegal occupation of Kuwait, the Special Rapporteur referred in his interim report to the General Assembly to the fact that little progress has been achieved in clarifying their whereabouts or fate (see A/50/734, paras. 18-28). The Special Rapporteur has noted, however, that, as of July 1994, the Government of Iraq renewed its participation in the Tripartite Committee and, as of December 1994 participated regularly in the sub-committee established by the Tripartite Committee to conduct the detailed technical work relating to investigations regarding 70 individual files. In addition, the mortal remains of one missing person were repatriated to the Kuwaiti authorities. Nevertheless, for almost all the cases on which the Government of Iraq has so far responded, it is said to have provided inadequate replies regarding the individual files. Indeed, based upon information received during the mission to Kuwait, despite the Iraqi authorities admitting to having arrested and detained some of the missing Kuwaitis, the Government of Iraq claims to be ignorant of the specific authority or military unit operating at the time and place where the person disappeared. The Government claims that the files that could have been useful to determine the fate of the missing persons were destroyed during the retreat of the Iraqi authorities from Kuwait and that many of these units were subsequently dissolved, with many of their members having retired from the armed forces. The Government of Iraq maintains that, according to information collected verbally by the responsible officers after the 1991 uprising in the south of Iraq, the detainees escaped by taking advantage of the confusion that prevailed in the southern governorates at the time. According to information received by the Special Rapporteur, the military units who were in the areas where the arrests and disappearances occurred have now resorted to pro forma responses, admitting only to having arrested and detained some of the still missing Kuwaitis. Some have participated in initial investigations into some of the cases.

B. Access to food and health care

31. The Special Rapporteur has referred to the rights to food and health care in all but one of his previous reports (A/46/647, paras. 52-54, 55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p), and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 (a), (b) and (c), and 58 (a), (b) and (c); E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, paras. 33-42, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; A/49/651, paras. 89-98; E/CN.4/1995/56, paras. 44-47; and A/50/734, paras. 41-51). Unfortunately, he has had the sad duty of recording a constantly deteriorating situation for most of the population, especially the most vulnerable segments, comprised of children, pregnant and nursing mothers, the elderly, the disabled and the increasingly large numbers of the destitute. Reports received from reliable sources over the past several months recount an ever worsening situation. In particular, the Special Rapporteur has paid careful attention to the reports and assessments of United Nations specialized agencies, such as the United Nations Children's Fund (UNICEF) and the Food and Agriculture Organization of the United Nations (FAO).

32. As a consequence of the Government of Iraq's intransigence on the "oil for food" formula, the economic situation continued to deteriorate during the past year as prices of essential food items and basic commodities increased even further beyond the reach of a large part of the population. While food

prices increased by 332 per cent in 1995, the national currency depreciated by 192 per cent and, for the most part, salaries and wages remained unchanged. According to a report published by FAO following a mission to Iraq in July-September 1995, the price of wheat flour in August 1995 was 11,667 times higher than in July 1990 and 33 times higher than in June 1993. For several other items, the increases are reported to be in the order of 4,000 to 5,000 times compared with July 1990 and 30 to 60 times compared with June 1993. At the same time, a UNICEF survey published in December 1995 indicates that the purchasing power of an average salary has deteriorated to less than 2 United States dollars per month (using the unofficial, i.e. real, exchange rate). This was mainly due to the continued depreciation of the Iraqi dinar from 1,000 to the dollar in April 1995 to 2,950 in December 1995. In central and southern Iraq, the monthly emoluments (salary and allowances) of lower-level government employees are ID 500-600. The average monthly emoluments of all civil servants are about ID 5,000.

33. The Government has continued distribution, at reduced levels, of its subsidized food basket of five essential food items, namely wheat flour, rice, vegetable oil, sugar and baby milk. In October 1994, the basket was reduced by 37 per cent in terms of calorie intake. A large percentage of the population has a shortfall in calorie intake of over 50 per cent of requirements because of the prohibitive food prices on the free market. According to FAO, such a ration provides only about one third of the food energy that was available prior to the war and is of poor nutritional quality with a lack of animal protein.

34. Although the number of privileged groups and persons appears to be declining, certain groups remain privileged by comparison with others, for example high-ranking military officers and the Ba'ath Party elite. Their privileged situation is to be observed not only in the fact that the average salary of a civil servant is much lower (less than half) that of a military officer, but more importantly in the fact that members of the Ba'ath Party and military officers enjoy their own food distribution network through cooperatives and they receive special salary allowances depending on their relationship with their supervisors and the extent of their support for the official policies of the Government. In this regard, it is reported that the Government of Iraq imported 25 million United States dollars worth of Italian marble to build "the largest mosque in the world" and that luxury goods for the inner circle still arrive on order via Jordan within 36 hours. In Baghdad, shops for government employees sell food at preferential prices, in some instances clearly bearing the name of the World Food Programme. The Republican Guards, too, are reportedly paid in United States dollars rather than Iraqi dinars. It is also said that relatives or associates of President Saddam Hussein own many businesses which enjoy privileged contractual relations with the Government. For example, the distribution of rations is decentralized through distribution centres; they provide rations to 50,000 private retail stores in Iraq, which in turn distribute the ration baskets to households in their areas on a monthly basis. Transportation of these rations from the warehouses to the retail stores is provided by private companies which are reportedly owned by Uday Hussein, the son of the President of Iraq, and is paid for by the Government.

35. It is also evident that there is discrimination within the country on a regular basis. The central cities of Iraq, especially Tikrit, Samar and parts of Baghdad, continue to enjoy preferred distribution of limited resources. The infrastructure (such as water purification and sewage systems) of the southern cities continues to lag far behind that of the central parts of the country. The economic situation in Arbil and Suleimaniyah governorates is worsening, mainly because of non-payment of salaries to civil servants since the beginning of 1995. The local authorities responsible for water and health are fully dependent on the United Nations and international non-governmental humanitarian organizations, even with regard to small repairs and basic activities, since no other funds are available. The situation is reportedly significantly better in Dohuk governorate where civil servants have continued to receive salaries and government departments are receiving direct support from the Governor and a regional political party. Still, most families are selling personal and household effects in order to survive. The continued border restrictions between the territory controlled by the Government of Iraq and the northern region keeps the price of fuel very high (particularly kerosene for heating and gas for cooking) and beyond the reach of most people.

36. The general economic decline, coupled with the prolonged food shortage has resulted in an aggravation of the already poor health situation throughout the country. Among the health-related problems is the increasing level of contaminated water. As a result, the number of cases of waterborne and diarrhoeal disease has increased. Initial investigation by UNICEF indicated that water was not being chlorinated as required. In addition, a cholera outbreak in the governorate of Suleimaniyah in November 1995 resulted in 340 confirmed cases and three deaths. Confirmed cases of cholera were also reported in the two other northern governorates of Arbil and Dohuk.

37. As stated by the Special Rapporteur on several previous occasions, the factual situation is not very much at issue: it is well accepted that millions of innocent people are suffering. The issue is one of responsibility. On this important point, the Special Rapporteur must reiterate that there exists no embargo on the import by Iraq of medicaments or foodstuffs for humanitarian purposes. Moreover, on 14 April 1995, the Security Council adopted resolution 986 (1995), which affords Iraq the opportunity of selling its oil up to the amount of 1 billion United States dollars every 90 days, on a renewable basis, in order to purchase essential foodstuffs and medical supplies for humanitarian purposes, under United Nations supervision of the use of the proceeds. As was the case with the "oil for food" formula presented pursuant to Security Council resolutions 706 (1991) and 712 (1991), the Government of Iraq has, up to the end of 1995, consistently rejected the offer made pursuant to Security Council resolution 986 (1995) with the argument that it is humiliating and an infringement of its sovereignty - despite the fact that the total annual sale of oil would amount to 4 billion United States dollars in a year, i.e. about one-quarter of Iraq's total export sales prior to its invasion of Kuwait and the imposition of United Nations economic sanctions. Under resolution 986 (1995), 30 per cent of the proceeds would be used to compensate Kuwait; and other victims of the 1990 Iraqi aggression. Modest amounts would also be used to pay the expenses of United Nations arms inspection programmes and to compensate Turkey for the use of its oil

pipeline. The remaining two thirds (almost 3 billion United States dollars) would go, through a United Nations administered account, to buy food, medicine and related humanitarian goods for the needy people of Iraq.

38. In order to move ahead with the "oil for food" formula, the United Nations Secretary-General addressed a letter to Iraqi Deputy Prime Minister Tariq Aziz on 18 January 1996 inviting the Government of Iraq to start discussion of the implementation of Security Council resolution 986 (1995). On 22 January 1996, the Government of Iraq accepted the Secretary-General's invitation to enter into discussions with the United Nations Secretariat with a view to implementation of the "oil for food" formula. This set the stage for high-level talks with representatives of the Government of Iraq which began at United Nations Headquarters in New York in early February. Although the agreement of the Government of Iraq to enter into discussions signals a retreat from its outright rejection of resolution 986 (1995), it has still to declare its acceptance of the resolution. In this regard, the Special Rapporteur notes that the Government of Iraq continues to insist on a complete lifting of curbs on its oil exports, despite current talks with the United Nations on a partial easing of sanctions imposed after the invasion of Kuwait in August 1990.

39. While the Special Rapporteur acknowledges that the proposed supervised sale of oil constitutes a control mechanism, he notes that such supervision would function only to guarantee that those in need of the benefits of the sale did indeed receive the benefits. In the absence of such a mechanism, it is uncertain that any resource benefits will go to those in the greatest need. This is the fundamental reason why the Security Council required the supervised sale of oil under its resolutions 706 (1991), 712 (1991) and also 986 (1995). It is basically a question of trust; if the Government has nothing to hide, it should be pleased to demonstrate this through complete openness and accountability in any sale of oil to benefit the long-suffering people on whose behalf it has pleaded. Such a guarantee appears justified in the circumstances. Given the general agreement that the suffering of the Iraqi people is worsening, the Special Rapporteur hopes that the Government of Iraq's position will not much longer stand in the way of benefits going to the very many who desperately require them.

40. Finally, the Special Rapporteur must reiterate that the Government of Iraq is under specific obligations to take advantage of available resources to fulfil the rights to food and health care pursuant to articles 2, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. In 1994, Iraq even accepted additional relevant international obligations relating to the rights of children, pursuant to articles 24 and 27 of the Convention on the Rights of the Child. According to the mid-term review of the Department of Humanitarian Affairs and the above-referred to assessment mission of FAO, Iraq's overall food requirements in 1995/1996 amount to about US$ 2.7 billion. The Special Rapporteur cannot help but underscore that the stated amounts are below the resources available through Security Council resolution 986 (1995) should the Government of Iraq finally take advantage of the opportunity to sell some oil for the good of the Iraqi people. Clearly, it is entirely within the means of the Government of Iraq to respond immediately to the dire food and health needs of the people of Iraq by cooperating with the United Nations, pursuant to resolution 986 (1995). Moreover, in accordance

with Security Council resolution 688 (1991) of 5 April 1991, Iraq is under a further obligation to cooperate with humanitarian agencies to relieve the suffering of the Iraqi people as a contribution to the maintenance of peace and security in the region.

C. The referendum of 15 October 1995

41. In his interim report to the General Assembly, the Special Rapporteur reported on the national referendum which was held in Iraq on 15 October 1995. The question was: "Are you in favour of Saddam Hussein assuming the post of President of the Republic of Iraq?". As the Special Rapporteur has previously commented in detail (see E/CN.4/1994/58, paras. 80-86 and 159-184; A/50/734, paras. 52-58), the conditions necessary to ensure that the free will of the people is the basis of the authority of government do not exist in the present legal and political order of Iraq. More specifically, the almost total control of information coupled with an all-pervasive and generalized fear among the population of severe sanctions for non-support of the prevailing order, maintained through abuses of power and facilitated by the absence of the rule of law in the country, combine totally to undermine and distort apparent expressions of the "will of the people".

42. While the Government purports that the referendum of 15 October 1995 was "free", the Special Rapporteur does not believe that the mere mechanical conduct of the formal process of voting can be equated with a genuine expression of the will of the people in Iraq. This is because being found to be or accused of being in opposition to the President and the prevailing order is literally life-threatening: according to Revolution Command Council Decree No. 840 of 4 November 1986, any person insulting the President of the Republic, the Revolution Command Council, the National Assembly, the Government or the Ba'ath Party is subject to severe penalties, including death. This kind of law, placed in the hands of a totally intrusive security apparatus unconstrained by any respect for the rule of law, means that virtually no citizen would risk demonstrating any opposition to the presidency or Government - or would do so at his mortal peril. Indeed, this conclusion is logical as long as there exist in Iraq such coercive forces as Decree No. 840 or political attacks against, and killings of, perceived oppositional leaders (see, for example, A/49/651, paras. 72-88). In this regard, the Special Rapporteur received the names of 12 individuals, reportedly members of the banned Iraqi Workers' Communist Party, who are believed to have been arrested between October and December 1995. The detainees are said to have been suspected of campaigning against the re-election of President Saddam Hussein in the presidential referendum of 12 October 1995. Following the referendum, hundreds of people were reportedly arrested in various parts of the country, particularly in al-Ramadi governorate, Baghdad, Basra and Karbala. Those targeted for arrest were believed to have been suspected of having cast their vote against the re-election of President Saddam Hussein.

43. Regarding the conduct of the referendum, all eligible voters were reportedly sent a two-part ballot card prior to the referendum, the first part of the card requiring detailed personal identification and the second part, detachable from the first, constituting the ballot itself. At the polling stations, voters were to present to the referendum administrators, in the

presence of various Iraqi security forces and Ba'ath Party officials, the first part of the ballot card together with official papers verifying their identity and eligibility, whereupon voters were directed to complete the second part of the card in a separate booth and then to place their completed ballots in an opaque sealed box. In the light of the overall political order in Iraq, but also in the light of the specific procedure at the polling stations, it may be appreciated that few if any voters would have felt confident to express their views against the President just after having formally presented themselves to security forces and Ba'ath Party officials. Indeed, this may to a large extent explain the remarkable fact that not one person voted against the President in the governorates of Karbala, Najaf, Misan, Muthana or Dhi Qar, while only 18 voted against in Basrah, i.e. virtually no one voted against the President in the southern governorates that had been the scene of bloody uprisings in April 1991. However, this seemingly paradoxical voting result may well be an entirely rational result based on fear arising out of the harsh repression of April 1991 and its aftermath; the population has now been totally subdued, made to conform, become economically exhausted and totally dependent. In this regard, the Special Rapporteur also received several allegations that, prior to the referendum, bus drivers were forced to hang banners on their vehicles saying "Yes, yes to our leader Saddam" and those who refused were heavily punished. In the southern part of the country, widescale military movements were carried out to intimidate the people and to close roads leading to cities like Basrah and Nassriyah. A large number of security forces were dispatched to the marshes area where they reportedly intimidated people, warning them that their ration cards would be confiscated if they did not vote for Saddam. It was also reported that a large number of youths, accused of referendum defiance and of abusing the President, were arrested in al-Jamhouriya stadium in Basrah. In such circumstances, it would appear natural to follow one's basic survival instincts and vote rationally in favour of the President, although this "rational" vote could hardly be construed as an expression of the genuine will of the people.

44. Given the prevailing legal and political order in Iraq, the national referendum of 15 October 1995 confirmed nothing except that, even amid heavy economic pressures, the government authorities are capable of organizing such an event in a period of only three weeks and achieving, according to Iraqi television, a 99.96 per cent "approval" of the President from a staggering participation rate of 99.467 per cent of the 8,402,321 eligible voters. Perhaps more noteworthy is the fact that the overwhelming results were achieved without the President once having to address the people, appear in public, make a single promise or in any sense campaign to win the approval of the electorate. The extremely high turn-out also indicates that the population was already fully identified and listed by voting district at the time the referendum was announced. This fact underlines the degree to which the government authorities are in control of the movement and activities of people within the country.

45. Upon analysis of the process and significance of the referendum in terms of applicable international human rights standards and after taking into consideration the political context in which the referendum was held, the Special Rapporteur concludes that given the prevailing legal and political order in Iraq, with life-threatening laws applicable to persons expressing any

opposition to the Government, the conduct of the referendum made a mockery of relevant international human rights standards, principally those contained in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant on Civil and Political Rights, to which Iraq is a party.

II. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

46. In view of the events of the past year, the Rapporteur considers that the conclusions contained in his report to the Commission on Human Rights at its fifty-first session are still valid (E/CN.4/1995/56, paras. 61-66). With respect to conclusions as to the facts, the Special Rapporteur has found no evidence of significant change in any area upon which he has reported. He continues to receive reports of violations of almost all human rights.

47. With respect to the several hundred persons who still remain missing as a result of the illegal occupation of Kuwait in 1990 and 1991, the Special Rapporteur reaffirms his opinion that the Government of Iraq is fully responsible for the fate of these persons and must take every step to assist in determining their exact whereabouts or fate. The Special Rapporteur concludes that the Government's resumed participation in the Tripartite Commission and the Technical Committee is a positive step, but still needs to be followed up by full, open and energetic cooperation aimed at resolving the outstanding cases without any further delay.

48. With respect to the rights to food and health, the Special Rapporteur emphasizes again the responsibility of Iraq pursuant to article 2 of the International Covenant on Economic, Social and Cultural Rights, to which Iraq is a party, which requires the Government "to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources". In this regard, the Special Rapporteur takes note of recent reports indicating some willingness on the part of the Government of Iraq to discuss the modalities of activating the "oil for food" formula available through Security Council resolutions 706 (1991), 712 (1991) and 986 (1995), and he expresses the hope that the new discussions which are taking place at United Nations Headquarters will not flounder again on the matter of supervision.

49. Concerning the national referendum of 15 October 1995, Special Rapporteur concludes that in the prevailing legal and political order in Iraq, with life threatening laws applicable to persons expressing any opposition to the Government, the conduct of the referendum made a mockery of international human rights standards and that the result in no way reflects the genuine will of the people as required by article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights.

50. Although the Special Rapporteur is still waiting for the Government of Iraq to respond in detail to a wide variety of questions he put in previous years (see, for example, A/47/367/Add.1, para. 55, and E/CN.4/1993/45, para. 146), the Special Rapporteur takes note of the Government's total rejection of his analyses, conclusions and recommendations and its preference

to cast aspersions upon his independence and good faith. In response, the Special Rapporteur reiterates that the stationing of United Nations human rights monitors throughout the country would constitute a reliable means of determining beyond reasonable doubt the factual situation with respect to human rights in Iraq. Moreover, if the Government of Iraq is confident that the Special Rapporteur is mistaken in his reporting on the situation, then the deployment of human rights monitors in Iraq should pose no difficulty for the Government.

51. Overall, the Special Rapporteur concludes that the structure of power in Iraq is such that human rights violations are inevitable, since guarantees for protection are absent and the scope for abuse of power is enormous. The Special Rapporteur repeats that there is no doubt as to the responsibility of the State of Iraq for the systematic violation of human rights and that the Government does not appear to be prepared even to consider the serious shortcomings in this respect. Similarly, there can be no doubt as to the responsibility of senior members of the Government of Iraq for serious human rights violations over many years.

B. Recommendations

52. The Special Rapporteur regrets that he finds it necessary to repeat in essence all of the recommendations made in his report to the Commission on Human Rights in 1995. He therefore, once again, recommends:

(a) That the Government of Iraq take immediate steps to bring the capacities and actions of its military and security forces into conformity with the standards of international law, in particular those of the International Covenant on Civil and Political Rights;

(b) That the Government of Iraq abrogate all laws granting impunity to specified forces or persons injuring or killing individuals for any purpose beyond the administration of justice under the rule of law as prescribed by international standards;

(c) That the Government of Iraq take immediate and unequivocal steps to stop the practice of torture and other cruel, inhuman and degrading treatment or punishment;

(d) That all persons arbitrarily detained be immediately released and that steps be taken to compensate all those who have suffered arbitrary arrest, detention or other miscarriages of justice, especially under special courts such as the Revolutionary Court;

(e) That the Government of Iraq immediately establish a national commission on disappearances and take appropriate steps to cooperate closely with the Working Group on Enforced or Involuntary Disappearances to resolve the thousands of cases which have been submitted through this body;

(f) That the Government of Iraq should step up its cooperation with the Tripartite Commission established to discover the whereabouts or resolve the fate of the several hundred Kuwaiti and third-country nationals who

disappeared during or subsequent to the illegal Iraqi occupation of Kuwait in 1990 and 1991;

(g) That, especially in view of the extremely serious shortage of food and medicine in the country, the Government of Iraq should immediately act to take advantage of the "food for oil" formula provided in Security Council resolutions 706 (1991), 712 (1991) and 986 (1995), which would enable the Government to purchase billions of dollars worth of urgently needed foodstuffs and medical supplies;

(h) That the Government end its internal economic embargo on the northern region, end its discriminatory practices restricting access to food and health care in the southern region and take steps to cooperate with international humanitarian agencies in the provision of relief to those in need throughout the country;

(i) That, notwithstanding the position of the Government of Iraq with respect to cooperation under Security Council resolutions 688 (1991), 706 (1991), 712 (1991) and 986 (1995), the international community continue to contribute assistance to alleviate the humanitarian needs of the Iraqi people;

(j) That the Government of Iraq should immediately abrogate all laws penalizing the free expression of competing views and ideas and should take all necessary steps to ensure that the genuine will of the people is the basis of authority in the State;

(k) That, considering the exceptional gravity of the situation of human rights in Iraq, the Government of Iraq agree to the stationing of human rights monitors throughout the country;

(l) That, irrespective of the position of the Government of Iraq with regard to the stationing of human rights monitors within the country, sufficient human and material resources be provided for the sending of human rights monitors to such locations as would facilitate improved information flow and assessment and would help in the independent verification of reports on the situation of human rights in Iraq.